IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9772 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PAPPUBHAI DAYASANKAR SHUKLA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9772 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/05/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 17.9.2002 passed against him by the Police Commissioner, Vadodara City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The detenu has been branded as "bootlegger" within the meaning of Section 2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in two different offences punishable under Sections 66B, 65AE, 116B, 81 of the Bombay Prohibition Act. First offence mentioned in the table at page 17 was registered on 29.8.2002. In the same way, the second offence was registered on 30.8.2002. In both the cases, huge stock of Indian Made Foreign Liquor was seized. So, it is recorded by the authority that the petitioner is a " bootlegger".

3. The petitioner has challenged the legality and validity of the order of detention on number of grounds mentioned in the memo of the petitioner. However, the ld. counsel Mr. Prajapati for the petitioner-detenu, has mainly focussed his arguments on one ground and has mainly concentrated his arguments on two grounds. Firstly, it is submitted that alleged activities of the petitioner-detenu mentioned in the grounds of detention cannot be said to be activities affecting the public order. So, the Commissioner of Police has no scope to exercise jurisdiction or powers vested in him under Section 3(2) of the PASA Act.

4. The subjective satisfaction recorded by the authority says that the activities of the petitioner-detenu affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. Ld. counsel Mr. Prajapati has taken me through the grounds of detention and relevant record available and has submitted that in the case of similar set of facts, this Court (Coram: A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in

absence of any other relevant and cogent set of facts and such set of facts credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material wherein also there is nothing to indicate any disturbance to the "public order". So, mere registration of criminal offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority to pass such order affecting adversely to the personal liberty.

5. The second point raised by ld. counsel Mr. Prajapati for the detenu is that when the order of detention was passed and served to the detenu, he was in judicial custody and has not applied for bail and, therefore, this aspect which is important was required to be considered which is not considered. So, on both the grounds, impugned order of detention requires to be quashed and set aside.

6. In view of settled legal position on the points raised by ld. counsel Mr. Prajapati, I am in agreement with his submissions and hence impugned order of detention fails and requires to be quashed and set aside on aforesaid two grounds alone.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.9.2002 passed by the Commissioner of Police, Vadodara City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

07-5-2003 [C. K.BUCH, J]

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